software program comprising multiple features to track and record the progress of the trade transaction.

A22 Cont'd

91. (new) A computer comprising computer storage media according to claim 89 and having said trade finance software program loaded and running whereby said computer is operable as a trade finance management system.

IN THE ABSTRACT:

Please SUBSTITUTE the Abstract of ~~the~~ Disclosure filed herewith, on a separate sheet, for the existing abstract.

REMARKS

In the outstanding Office Action, claims 1-34 were presented for examination. Rejected was advanced variously on the basis of 35 U.S.C. §102 or §103 against claims 1-34 as being anticipated by or unpatentable in view of references to Ordish et al. and Lindsey et al.

The Office Action has been most carefully studied. In this amendment applicant has canceled claims 1-34, *without prejudice,* and has added new claims 35-91 more particularly pointing out the invention. The new claims have been carefully written to avoid any questions under 35 U.S.C. §112, in accordance with the guidelines and

requirements set forth in the outstanding Office Action. Accordingly, as will be discussed in detail below, it is believed that the application is clearly in condition for allowance.

Specification

The specification has been amended, for the convenience of the reader, to correct various minor deficiencies and, at page 39 to explicitly set forth the League of Nations 1930-31 convention defining a bill of exchange, which was previously only referenced.

The Invention As Now Claimed in Claims 35-43

Applicant's invention as now claimed in claims 35-43, provides an improved method of trade financing that solves many of the problems encountered in financing import-export trade, and other comparable transactions. Some desirable goals for an improved method of trade financing are set forth in applicant's specification at page 3 lines 3-13. These goals include ensuring the seller be fully reimbursed and not be exposed to the risk that the buyer decides not to pay for the traded product after it has been released by the seller and permitting creditworthy buyers time to pay without having to commit financial resources beforehand. Many if not all of these goals are achievable by employing the claimed invention which solves the problem of providing a trade financing method and instruments which can reduce the seller's risk and the buyer's financial exposure.

As can also be understood by referring to the description in the specification of Figures 5 and 6 of the drawings, at page 30, line 8 to page 33, line 24, the invention claimed in new claim 35 provides a trade finance method employing a novel event-actuated payment draft drawn on the buyer and executed by the buyer, indicating agreement of the buyer and seller to the terms of the payment draft. The buyer is physically separated from the seller, as taught in applicant's specification, for example at page 89, lines 9-13. Thus a typical retail counter purchase where a traded product is exchanged for cash, or a credit card purchase is made, is not practicable.

As claimed in claim 42, the seller can be an exporter in one country, state or region, while the buyer is an importer in another country, state or region, and the traded product can comprise shippable goods. In this case the activating event comprises release of the goods by the exporter for shipment to the importer, e.g to a common carrier or the like.

Preferably, the payment draft is also executed by the seller, as claimed in claim 36, whereby the payment draft becomes a legally enforceable order to pay whose terms are agreed by both the buyer and the seller. As defined in claim 35, the payment draft is dormant and non-negotiable until activated by an event agreeable to buyer, for example, release of the traded product. As disclosed in the specification, other events

may actuate the payment draft, as agreed by the buyer and seller, for example, the determinable availability of funds such as asset sale proceeds.

Once the payment draft is activated by a happening of the specified event, the seller has a transaction-independent negotiable instrument, a trade acceptance, which can be sold at a discount, if desired, see for example Figure 8, step 10 et seq. and the related description in applicant's specification. The claimed method is uniquely advantageous to both the buyer and the seller. The seller is protected from the risk that the buyer will decide not to pay after the seller has released the traded product (see page 8, lines 14-21 of applicant's specification). Also, the buyer is protected against the seller delaying or failing to ship the traded product while holding a pre-payment instrument from the buyer. Nor does the buyer have to commit financial resources before the seller releases the product. Prior art methods suffer from either or both of these drawbacks.

Claim 37 recites that the activating event comprises the release of the traded product from the seller's control and recites that release, as an element of the claimed method. The release of the traded product, e.g. shipment of goods by an exporter, occurs subsequently to receipt by the seller of the prerelease payment draft. At this point, the seller has a negotiable instrument, but the buyer, who may not yet have received the product, has not yet had to commit financial resources.

Claims 38-40 call for the prerelease payment draft to have a transaction window containing transaction identifiers that permit identification of the transaction. The transaction identifiers when embodied in a separate window, as claimed, do not impair the legal character of the bill of exchange, and can be employed to identify and track the underlying transaction.

Claim Rejections - 35 U.S.C. §102(b) Anticipation by Ordish et al.

The rejection of now-canceled claims 30-31 as anticipated by Ordish et al. is believed not remotely relevant to new claims 35-43, 82-91 or any other claims now pending, which have been carefully written to be clearly distinguished from Ordish et al., or any other art known to applicant.

Ordish et al. relates to matching systems for effecting trades of trading instruments such as foreign exchange, stocks, bonds, commodities future contracts, etc. which match bids and offers for the trading instruments (column 1, lines 25-26, column 4, lines 13-15). The object is to provide confirmed trades, i.e. sales, of particular trading instruments.

Column 4, lines 29-35 of Ordish et al., cited by the Office, simply state that the host computer can generate a match notification data message to various keystations on a network. Such message notification has no bearing on applicant's invention as now

claimed in new claims 35-42, nor does it appear remotely relevant to now-canceled claim 30 or 31. Accordingly, applicant has looked to other portions of Ordish et al. for information more relevant to applicant's claimed invention, believing that there might be a clerical error in the paragraph and line numbers cited by the Office. However, the remainder of Ordish et al. appears to be no more pertinent than are the cited portions of column 4.

As best understood by applicant, Ordish et al. provides a computerized matching system for matching bids and offers for trading instruments which minimizes losses due to broken trades by providing an enhanced match confirmation system (see for example column 3, line 65 to column 4, line 5 and claim 1). Such teaching has no bearing on applicant's claimed invention which provides new methods and instruments for financing trade, for example international import-export trade in goods and services.

Clearly, applicant's novel use of a payment draft, as claimed in claim 35, and applicant's novel financial instrument embodying a pre-specified activating event, as claimed in claim 82, are not remotely suggested by Ordish et al.

The Office states, in item 4 of the action, that Ordish teaches "a financial instrument comprising a pre-approved bill of exchange". However, no such teaching

has been found in Ordish et al. by applicant. The closest teaching appears to be the trading instruments mentioned at column 4, lines 13-15, namely, foreign exchange, stocks, bonds, commodities future contracts, etc. These are instruments which may be traded and none is useful for or intended for financing a trade in a product or service, i.e. a traded product. Certainly, none is a bill of exchange.

None of Ordish et al.'s trading instruments includes an order to pay addressed by one person to another. Foreign exchange, currency, or banknotes, U. S. or foreign, do not require an addressee to pay the face value of the currency, nor are they "payable to the seller's order", as required by new claim 35. At the most they are a promise that the issuer, not an addressee, will pay or redeem the banknote, or other currency, to the bearer. None of Ordish et al.'s other trading instruments, namely stocks, bonds or commodities future contracts, is an order for payment.

Unlike applicant's claimed payment draft and novel bills of exchange, none of Ordish et al.'s instruments is in and of itself, "payable to a seller" nor does it evidence "willingness of a buyer to pay the seller a sum certain of money at a specific point in future time", as alleged by the Office.

With regard to Ordish et al.'s time interval, this characteristic of the Ordish et al. teaching is quite unlike applicant's term for payment. The time interval in Ordish et al.

relates to the periods of timers TA, TB running on a computer system to activate message display, or activate an alarm, if a message confirming a trade is, or is not, received. The duration is measured in seconds, e.g. 15 seconds or 60 seconds (column 6, lines 30-46, column 7, lines 14-19). One skilled in the art would not remotely relate such a time interval to applicant's claimed term for paying for a product, notably a good or service, which term would be understood to have a duration measured, at the very least, in days.

In summary, Ordish et al.'s trading instruments are financial products which might be employed in applicant's invention, as now claimed, as the traded product, but which are not remotely relevant to applicant's claimed payment draft or bills of exchange. They are not payable to a seller's order; nor drawn on the buyer and executed by the buyer; nor do they specify an event-activated payment term.

Claim Rejections - 35 U.S.C. §103 Unpatentability over Ordish et al. in view of Lindsey et al.

The rejection of claims 1-29 and 32-34 under 35 U.S.C. §103 for unpatentability over Ordish et al. in view of Lindsey et al. is believed clearly no more applicable to new claims 35-43 than were rejections based on Ordish et al. alone in view of the clear and patentable distinctions from Ordish et al. the claims recite, as explained hereinabove.

Lindsey et al. discloses a commodity trading system, for trading fungible commodities such as bales of cotton or blocks of bales, which provides electronic title representation to eliminate (paper) document handling (abstract). Lindsey et al. is not at all relevant to applicant's invention, as now claimed, nor does Lindsey et al. in any way correct the deficiencies of Ordish et al., as a reference.

Applicant teaches and claims methods and instruments which entail extension of credit to a buyer in a trade transaction, employing, as already explained herein, a payment draft or bill of exchange that provides for payment within a term calculated to run from the happening of an event such as the release of the traded product from the seller. In contrast, Lindsey et al.'s teaching is limited to transactions employing *cash before delivery*, the antithesis of a credit based transaction. One skilled in the art would therefore have no reason to employ Lindsey et al.'s teachings to fulfil applicant's objectives and, in fact, Lindsey et al. teaches nothing helpful to those objectives.

For example, Lindsey teaches, (Fig 3F, blocks 186-190, and column 26, lines 21-48) that physical shipment of (cotton) bales takes place if and only when "a database maintained by the mainframe computer 10 (that) reflects the actual receipt of payment of any cotton bale involved in a sale transaction. Only after such bales have been paid for can a shipping transaction be carried out. "

To facilitate the cotton bale producer being able to provide the warehouse cash before delivery, Lindsey teaches methods of enabling the producer to benefit from government loan programs. Government loan programs are not remotely relevant to applicant's claimed invention. For example, the producer of goods (in the case of cotton, the grower who placed the goods in the warehouse and obtained a warehouse receipt) can receive an "immediate cash advance" (column 32, line 25) utilizing a Loan Advance Program (LAP) in which "Producers can tender their cotton to PCCA (Plains Cotton Cooperative Association, assignee of the Lindsey et al. patent) and receive a cash advance equal to the Commodity Credit Corporation (CCC) loan price, the price guaranteed by the Federal Government." See column 32 lines 17-27.

Referring again to Fig. 3f, at block 186, Lindsey et al.'s program will clearly only operate if payment is received before the bale is shipped, and this process is apparently applicable to all types of sales contemplated by Lindsey. Lindsey neither teaches nor suggests a trade finance program to extend credit to the buyer. Lindsey et al. teaches a prepayment program (column 26, lines 24-25) which includes allowing the buyer of deferred payment goods to take over the loan payments of the producer who has put the goods in the Loan Advance Program (column 32, lines 30-33) to wit: "TELCOT calculates the loan amount and all charges such as storage and interest in order to offer the cotton at a price to buyers so that the producer nets the desired amount of equity per-bale." Thus, Lindsey et al. teaches a cash before delivery method that may employ

a deferred sale to allow for transfer of title and hence obligation for storage charges, and allows the buyer to pay the interest in place of the producer who put the goods in the LAP.

Fig. 3C of Lindsey et al., cited by the Office, illustrates computer operations for placing cotton bales or a block of bales, in a loan program (column 20, line 63 to column 22, line 21), which operations include preparation of a government payment draft (block 124) and check printing. FIG. 3D, shows computer operations relating to the sale of a cotton bale, which provide for a deferred sale. However, applicant does not claim issuance of a payment draft, check printing or deferred sales, *per se*. Applicant's claimed prelease payment draft is clearly distinguished from Lindsey et al.'s government payment draft which *inter alia* lacks an event-activated term, and is drawn on the government not the buyer.

Any more than Ordish et al., Lindsey et al. does not remotely suggest applicant's novel use of a payment draft, as claimed in claim 35, and novel financial instrument embodying a pre-specified activating event as claimed in claim 82. Moreover, applicant has been unable to find in Lindsey et al, any disclosure regarding a buyer-executed payment draft having a term initiated by an event occurring subsequently to buyer execution of the draft, as alleged by the Office in item 35 of the Office action. Clearly, combining Lindsey et al. with Ordish et al. would not result in applicant's claimed

invention, even were there motivation for combining the references, which applicant believes there is not. No such motivation is seen in view of the divergent objectives of the teachings of the two references, notwithstanding the Office's urging, at the end of item 35 of the Office action, in connection with (now-canceled) claim 26, that "The motivation for this is to teach a trade finance program".

The Office's conclusions with regard to claim 28, item 37, are unsupported by the references which lack disclosure of applicant's first and second bills of exchange, as claimed, or of their mutual extinguishability. Whereas Lindsey et al. may teach use of a money draft and a deferred sales program, as stated by the Office, applicant does not understand how a teaching of "utilizing installments in a deferred sales program", if that is what the references teach, which applicant does not admit, would relate to applicant's claim which uses quite different terms to define distinctly different subject matter, as has been explained.

The Office's extensive rationale to support unpatentability rejections over Ordish et al. in view of Lindsey et al., items 7-41 of the Office action, are replete with references to motivations that are not applicant's motivations and are not related to applicant's objectives. For example, the Office references motivations to "describe an instalment sale" (item 9, last three lines); "teach the purchase and subsequent ownership of title by the buyer." (item 10, last two lines); "describe an instalment or deferred sale etc." (item

11, last three lines); "record a transaction" (item 13, last line); "to define ownership transfer in the transaction process" (item 18, last line); "the preservation of the sign of approval in the transaction" (items 20 and 21, last line); and so on. These motivations are not remotely relevant to applicant's objectives of providing a novel trade financing method, and instruments, which can reduce the seller's risks and the buyer's financial exposure.

The invention as now claimed in claims 35-43 is believed clearly and patentably distinguished from Lindsey et al., even when combined with Ordish et al., and from any other art known to applicant.

The Invention as Now Claimed in Claims 44-90

New independent Claim 44 defines the invention as it relates to the employment of two mutually extinguishable bills of exchange the first of which embodies the features of the event-activated prerelease payment draft defined in claim 35, as does the claimed method. Claim 44 is therefore patentable for the reasons that claim 35 is believed patentable. The specification has been amended to recite the definition of a bill of exchange as it appears in the League of Nations 1930/1931 Convention and to clarify that the invention employs that definition.

Accordingly, claim 44 is additionally distinguished from Ordish et al. and/or Lindsey et al. or letters of credit or any other art of record, or known to applicant, which does not relate to bills of exchange, by applicant's novel employment of the characteristic features of a bill of exchange. For example, a significant practical value of an accepted bill of exchange, which is an order to pay, is that the acceptor (the buyer in claim 44) has given specific permission to an institution holding money on behalf of the acceptor to debit the acceptor's account, and remit money as directed in the bill of exchange. Neither Ordish nor Lindsey et al. teaches such debit activity which is an important distinguishing feature of applicant's invention, as now claimed.

A further significant distinctive feature of claim 44 (and also of many of claims 45-91, for example claims 64, 72 and 76) is the requirement that the two bills of exchange be mutually extinguishable, which feature is not remotely suggested by any of the art of record, whether considered alone or in combination. As explained in the specification at page 26, lines 3-10, this novel use of two similar, mutually extinguishable bills of exchange, in applicant's claimed trade finance method, permits enhancement of the collateralization of the buyer's credit. One of the bills of exchange, preferably the first, can be held as collateral in one location while the other, preferably the second, is used for collection. The mutual extinguishability feature enables collection made on the second bill of exchange automatically to extinguish the collateral provided by the first, without any further action being required.

Claims 45-91 are believed additionally clearly and patentably distinguished from the references of record for the additional features they recite, for example claims 46-49, 52-53, and 68-80 recite a novel pro-forma invoice which is preferably executed by both the buyer and seller and provides a convenient vehicle for documenting the details of the transaction and embodying valuable terms and conditions of the agreement between the buyer and seller. A particularly valuable optional use of the pro-forma invoice is the inclusion of a contractual condition removing merchandise claims or disputes from the payment cycle for resolution in accordance with international convention or treaty. The nature and use of applicant's novel pro-forma invoice are amply described in the specification, for example at page 41, line 5 to page 42, line 11; and at page 53 line 11 to the last line of page 58, where Figure 11C is referenced.

Furthermore claims 49, 51 and 55 define the application of the invention to international trade where the novel instruments and methods provided by the invention are particularly valuable in simplifying the finance process, and protecting both the buyer and seller in what are often difficult transactions where the product may be in transit for days or weeks.

In addition, claims 45, 55-61 and 74-80, *inter alia*, relate to conversion of applicant's novel payment draft or bill of exchange to a negotiable financial instrument

such as a banker's acceptance which as described at page 23, line 22 to page 24, line 7, and elsewhere in the specification, can provide the seller with immediate liquidity.

References Cited on Assignee's Counterpart International Patent Application

In connection with applicant's assignee's counterpart international PCT patent an International Search Report dated 20 December 2001, cited references to Harton and De Berge as being relevant to the presence of an inventive step in four only of applicant's claims, claims 1-3 and 41. Four additional references, U. S. Patent Nos. 5,717,989 (Tozzoli et al); 5,710,889 (Clark et al.); 5,890,140 (Clark et al.) and Lustig as being of interest for background purposes only. Applicant's information disclosure statement filed herewith makes of record those of the references in the International search report those of the references that were not previously of record herein.

Both Harton and De Berge relate to letters of credit ("L/Cs"). In addition, de Berge discusses open account (receivables) financing. Both prior art methods are fully addressed in applicant's specification (see Figs. 1A and 2 and the description at page 3, line 18 to page 4, line 10 and at page 4, line 25 to page 6, line 4) and these references add nothing to applicant's own prior art disclosure.

Applicants' claims as now amended, clearly exclude letters of credit because a letter of credit is not a "buyer-executed payment draft" which is a promise to pay with

legal authority, a negotiable instrument. A letter of credit is a pre-payment commitment with a set of instructions (the letter) regarding a subsequent demand for payment. Furthermore, a letter of credit is transaction-dependent whereas the claimed payment draft, or bill of exchange, is not.

Applicant's claimed invention is further distinguished from De Berge or Harton in that the recited payment draft is drawn on the buyer whereas the draft drawn in a letter of credit is drawn on the bank initiating the letter of credit. Applicant's claims relate to a payment draft which specifies a term for the ordered payment to be made.

The bank initiating a letter of credit will require that the buyer reduce their financial resources, either by reducing their line of credit, and thus, their borrowing capacity, or by providing cash collateral reducing their cash on hand until the buyer reimburses the bank initiating the letter of credit for its services including payment of the accepted draft drawn upon it. The negative financial impact on the buyer endures from the time the letter of credit is issued at least until the bank, as holder of title in a letter of credit transaction, releases the traded product to the buyer, or until the expiry date of the letter of credit, should it be unfulfilled, whichever comes first. In contrast, the invention of claim 1 allows the buyer the full use of their financial resources in the time prior to the triggering event, which is preferably the seller's release of the traded product. Lacking such a payment term, the letter of credit process cannot and does not

remotely suggest applicant's novel employment of a triggering event occurring subsequently to execution of the payment draft, for example the seller's release of the traded product.

Applicant's amended Claims call for the payment draft to be accepted by the buyer prior to a specified event, e.g release of the traded product by the seller. In contrast, a letter of credit is a commitment by a bank, not the buyer to accept a bill of exchange after the event of a transaction, provided that the issuing bank's instructions are followed precisely, letter by letter.

As taught by De Berge, (page 1, line 40 to page 3, line 18) , use of a letter of credit for trade finance requires a complex process wherein the buyer creates a standard, the bank translates that standard into its format (letter of credit), communicates that format to the seller through an advising bank, evaluates the documentation produced by the seller as evidence of compliance against the buyer's standard, as translated and advised by the issuing bank and decides whether or not to make payment. Such complexity does not remotely suggest applicant's simple trade finance method.

The remaining art of record has been carefully considered, but does not appear to be remotely relevant to any of applicant's claims.

In view of the above amendments and the discussion relating thereto, it is respectfully submitted that the instant application, as amended, is in condition for allowance. Such action is most earnestly solicited. If for any reason the Examiner feels that consultation with Applicant's attorney would be helpful in the advancement of the prosecution, he is invited to call the telephone number below for an interview.

Respectfully submitted,

By: _____
Anthony H. Handal
Reg. No. 26,275
Roger Pitt
Reg. No. 46,996

HANDAL & MOROFSKY
80 Washington Street
Norwalk, CT 06854
(203) 838-8589

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on February 28, 2001

_____
Anthony H. Handal
Reg. No. 26,275
Roger Pitt
Reg. No. 46,996